

Members of the jury, now that you have heard all the evidence and the arguments of counsel, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which were received into evidence; and
3. any facts to which the lawyers have agreed

The exhibits will be brought into the jury room. Do not concern yourselves with the fact that they are not consecutively numbered and may have gaps between numbers. This results from numbering conventions that have been adopted, from rulings I have made excluding exhibits and from the fact that lawyers often prepare exhibits which they decide not to introduce into evidence.

In reaching your verdict, you may consider only the testimony and

exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they said in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Testimony that was excluded or stricken, or that you were instructed to disregard, is not evidence and must not be considered. In addition sometimes testimony and exhibits were received only for a limited purpose; when I gave a limiting instruction, you must follow it.

(4) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. For example, the witness testifies “I saw

Joe break the glass.” Circumstantial evidence is proof of one or more facts from which you could find another fact. For example, the witness testifies “I saw Joe holding the glass before I left the room. No one else was in it. When I returned, the broken glass was lying at Joe’s feet.” You could find that Joe had broken the glass in either example. You must consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does

not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testified about it.

Some witnesses, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

When a party has the burden of proof on any claim or affirmative defense by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim or affirmative defense is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.



You should decide the case as to each defendant separately. Unless otherwise stated, the instructions apply to all parties.

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

An agent is a person who performs services for another person under an express or implied agreement and who is subject to the other's control or right to control the manner and means of performing the services. The other person is called a principal.

Any act or omission of an agent within the scope of authority is the act or omission of the principal.

Laura Fujisawa claims that she was harmed by the negligence of Compass Vision and National Medical Services. To establish this claim, Laura Fujisawa must prove all of the following:

1. That Compass and/or National was negligent;
2. That she was harmed; and
3. That the negligence of Compass and/or National was a substantial factor in causing her harm.

Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

A company can be negligent by acting or by failing to act. A company is negligent if it does something that a reasonably careful company would not do in the same situation or fails to do something that a reasonably careful company would do in the same situation.

You must decide whether Compass and/or National acted reasonably towards Laura Fujisawa.

A substantial factor in causing harm is a factor that a reasonable

person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. This is also true with respect to whether either defendant's conduct was a substantial factor in bringing about harm to Laura Fujisawa.

A person's negligence may combine with another factor to cause harm. If you find that negligence of Compass and/or National was a substantial factor in causing Laura Fujisawa's harm, then the negligent defendant is responsible for the harm. Neither Compass nor National can avoid responsibility just because some other person, condition, or event was also a substantial factor in causing Laura Fujisawa's harm.

You may decide that more than one of the defendants was negligent, but that the negligence of only one of them could have actually caused Laura Fujisawa's harm. If you cannot decide which defendant caused her harm, you must decide that each defendant is responsible for the harm.



Defendants claim that plaintiff's own negligence contributed to her harm. To succeed on this claim, defendants must prove both of the following:

1. That plaintiff was negligent; and
2. That plaintiff's negligence was a substantial factor in causing her harm.

If defendants prove the above, plaintiff's damages are reduced by your determination of the percentage of her responsibility. I will calculate the actual reduction.

Every person has a right to expect that every other person will use reasonable care and will not violate the law, unless he or she knows, or should know, that the other person will not use reasonable care or will violate the law.

If you decide that Laura Fujisawa has proved her claim against Compass and/or National, you also must decide how much money will reasonably compensate her for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by the wrongful conduct of Compass and/or National, even if the particular harm could not have been anticipated.

Plaintiff does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

The damages claimed by Laura Fujisawa for the harm caused by Compass and National fall into two categories called economic damages and noneconomic damages. You will be asked on the verdict form to state the two categories of damages separately.

The following are the specific items of economic damages claimed by Laura Fujisawa:

1. Lost past earnings from her employment as a pharmacist. To recover damages for past lost earnings, she must prove the amount of income that she has lost to date.

2. Lost future earnings from her employment as a pharmacist. To recover damages for future lost earnings, she must prove the amount of income she will be reasonably certain to lose in the future as a result of the injury.

Laura Fujisawa claims damages for past and future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress.

To recover for future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress, plaintiff must prove that she is reasonably certain to suffer that harm.

No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

For future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress, determine the amount in current dollars paid at the time of judgment that will compensate her for future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation and emotional distress.

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

If it becomes necessary during your deliberations to communicate with me, you may send a note through Ms. Yiu, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court. A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise Ms. Yiu that you are ready to return to the courtroom.